

NORTHERN PACIFIC HALIBUT ACT

PENALTY SCHEDULE

The Northern Pacific Halibut Act of 1982, 16 U.S.C. 773f, provides for the assessment of a civil penalty not to exceed \$25,000 for each violation, and lists various factors to be taken into account in determining the levels of civil penalties. The following penalties are intended as guidelines for starting points in civil penalty determinations for first offenses by domestic vessels of 50 C.F.R. Part 300, Subpart E. Any amount stated may be raised or lowered depending on the facts and circumstances of particular cases, including the amount of fish, if any, involved in the violation. Base penalties listed for the specific violation may be doubled for certain second offenses under this part. Civil penalty determinations for subsequent violations will be based on the facts and circumstances of each case. Publication of civil penalty guidelines for violations of 50 C.F.R. Part 300, Subpart E is without prejudice to use of other NPHA remedies in appropriate cases.

These recommended penalties are applicable only to administrative enforcement actions. For more serious violations (i.e. violations for which assessment of an administrative civil penalty is not sufficient), The NPHA provides for the judicial forfeiture of vessels and/or their catch. 16 U.S.C. 773h. By definition, judicial forfeiture actions represent more serious violations of the NPHA warranting significantly higher penalties than those recommended herein.

This penalty schedule is based upon the 1992 regulations, but each year the International Pacific Halibut Commission (IPHA) promulgates new regulations, sometimes adding provisions or renumbering sections. The prosecuting attorney will apply this schedule with that in mind, looking to the substance of the violation and the penalty recommended (and in the event of new or changed provisions, considering the most analogous violation), regardless whether this schedule has been revised to reflect such changes. The references to the regulations are to the regulations in 50 C.F.R. Part 300, Subpart E. **Recommended penalties for violations of the Individual Fishing Quota and Community Development Quota Program are located in the Penalty Schedule for the Groundfish Fisheries Off the Coast of Alaska.**

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I Closed Season / Area Violations

- A Fishing for, landing, or retaining halibut during a closed period, in a closed area, or in an area where the IPHC has announced that the catch limit has been taken; retrieving gear from a closed area without first offloading halibut and obtaining an inspection, or without prior notification of said retrieval where no halibut area aboard; or fishing for halibut on board a licensed vessel in an area where fishing is not permitted:
- 1 If fishing during a closed season is within one hour of the opening or closing: \$1,500 - \$2,500
 - 2 If fishing is more than one hour before or after the season opening: \$2,500 - \$10,000, plus the value of the entire catch. Permit sanctions may be considered.
- B Possession of halibut aboard a vessel in an area where commercial halibut fishing is not permitted, unless the vessel is in transit to or within a port; or possession of halibut known to have been taken in contravention of the regulations.
Penalty: \$2,500 - \$10,000, plus forfeiture or value of catch
- C Possession of halibut during a closed period while fishing for other species of fish:
- a Up to 35 halibut: \$300 per fish, plus forfeiture of halibut or the value thereof
 - b More than 35 halibut: \$400 - \$500 per halibut, plus forfeiture of the halibut or the value thereof
- D Catching or possessing, or using a vessel to catch or possess halibut during an open fishing period where setline gear was used to fish for any species of fish during the 72-hour period immediately preceding the opening.
Penalty: \$2,000 - \$5,000
- E Fishing for halibut in more than one regulatory area during a fishing period, serving as a tender before halibut catch has been landed and sold, failing to offload between fishing periods.
Penalty: \$2,000 - \$6,000

II Logging and Record Keeping Violations

- A Failure to keep an accurate log of halibut fishing operations, or to keep an accurate record of purchases or receipts of halibut.
Penalty: \$500 - \$5,000
- B Failure to include IPHC license number on fish ticket.
Penalty: \$1,000
- C Failure to update fishing log within time specified.
Penalty: \$500
- D Failure to retain fishing log or purchase records for two years; failure to allow them to be inspected by a fishery officer; or failure to have log on board while fishing, in transit, and 5 days after offloading.
Penalty: \$2,500
- E Making false entries in fishing log or on fish ticket.
Penalty: \$5,000 - \$10,000

III Size Limit Violations

- A Take or possess halibut less than 32 inches with head on, or less than 24 inches with head off, or cutting halibut in any manner that prevents determination of minimum size:
 - 1 20 or fewer halibut: \$200 per undersized or disfigured fish, plus forfeiture of undersized halibut
 - 2 More than 20 halibut: \$5,000, plus forfeiture of undersized halibut
- B Possess headless halibut on board a vessel while fishing for halibut or tendering in Area 2A
Penalty: \$1,000 - \$5,000, plus forfeiture of headless catch, or value thereof

IV Gear Violations

- A Fishing for halibut with other than hook and line gear, possessing halibut taken with other than hook and line gear.
Penalty: \$2,500 - \$5,000, plus forfeiture of catch or the value thereof
- B Possessing halibut aboard a vessel containing other than hook and line gear.
Penalty: \$1,000 - \$2,500
- C Failure to have setline gear or skate market buoys properly marked.
Penalty: \$500 - \$2,500
- D Fishing for halibut, or possession of halibut on board a vessel that is equipped with or possesses an automated hook stripper
Penalty: \$2,500 - \$5,000

V Clearance and Inspection Violations

- A Failure to obtain, at the location and times specified, a valid clearance and hold inspection both before fishing for or unloading halibut.
Penalty: \$1,000 - \$5,000
- B Failure to submit to a hold inspection as requested by a fishery officer after gear has been retrieved during a closed period.
Penalty: \$1,000 - \$10,000, plus value of halibut taken or unloaded without first obtaining a valid clearance and hold inspection
- C Exceeding halibut fishing period limit:
 - 1 Exceeding fishing period limit (10% or less): \$100, plus forfeiture of overage or value thereof
 - 2 Exceeding fishing period limit (10% to 25%): \$100 - \$5,000 per pound of overage, plus forfeiture of overage or value thereof

- 3 Exceeding fishing period limit (more than 25%): \$5,000 - \$10,000, plus forfeiture of overage or value thereof

VI Sport Fishing Violations

- A Sport fishing for halibut out of season:
 - 1 If the vessel is a charter boat: \$500 per person charged to the owner and operator
 - 2 If the vessel is not a charter boat: \$200 per person
- B Sport fishing for halibut with other than handline or rod with no more than two hooks attached:
(Note: If the gear used is setline gear or gear that is usually used in commercial fishing, and the “sport” fishing occurs during a closed period, the penalties recommended for fishing in a closed season should be used.)
- C Exceeding the daily bag limit or possession limit; catching undersized halibut (California, Oregon and Washington):
Penalty: \$200 per overlimit or undersized fish, plus forfeiture of the fish
- D Disfigurement of halibut that prevents the determination of its minimum size
Penalty: \$200 per fish, plus forfeiture of the disfigured fish
- E Disfigurement of halibut that prevents the catch limit determination
Penalty: \$200 for the first 50 pounds of disfigured fish, plus \$200 for each 50 pounds over the first 50 pounds.
- F Possession of sport-caught halibut aboard a vessel when other fish aboard that vessel are destined for commercial use
 - 1 Up to 5 halibut: \$500 per fish, plus forfeiture of the sport-caught fish
 - 2 More than 5 halibut: \$2,500 - \$8,000, plus forfeiture of the sport-caught halibut

VII Adjusting Factors: General

The adjusting factors set forth below may or may not be applied, depending on the facts and circumstances of any given case. The various factors listed are not meant to be exclusive; other factors may be present in any particular case which warrant consideration. These adjusting factors may be applied to assess a penalty within or above or below the suggested base amount.

- A Gravity / extent of the violation
- B Culpability
- C Surrounding Circumstances
- D Prior offenses
- E Ability to Pay
- F Deterrence of future violations
- G Commercial or economic benefit derived from the violation

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